

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KELVIN LORENZO McDANIEL,

Petitioner,

v.

**Civil Action No. 5:07cv133
(Judge Stamp)**

JOE D. DRIVER, Warden,

Respondent.

**ORDER DENYING PETITIONER'S MOTION
FOR APPOINTED COUNSEL**

On October 12, 2007, *pro se* petitioner, Kelvin McDaniel, filed the above-styled action pursuant to 28 U.S.C. §2241. On January 9, 2008, he filed a Motion to Appoint Counsel. The authority for the Court to appoint counsel in §2241 and §2254 actions is discretionary and there is no Constitutional right to have appointed counsel in post conviction proceedings. Pennsylvania v. Finley, 481 U.S. 551 (1987). A Court may appoint counsel to a financially eligible person if justice so requires. 18 U.S.C. §3006(A). Appointment of counsel for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. §3006(A), is only required when necessary for utilization of discovery procedures and when an evidentiary hearing is required. See Rules 6(a) and 8(c) of the Rules Governing Section 2254 cases in the United States District Courts.

Upon review of the file, I have concluded that the issues in this matter are not complex, that this matter does not require discovery or an evidentiary hearing, and that petitioner has not demonstrated circumstances which demonstrate the need for appointment of counsel. Accordingly, Petitioner's motion for appointment of counsel (Doc. 28) is hereby DENIED.

IT IS SO ORDERED.

The Clerk of the Court is directed to mail a copy of this Order to the *pro se* petitioner and to the United States Attorney for the Northern District of West Virginia.

DATED: January 10, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE